STATE OF MICHIGAN

COURT OF APPEALS

ARNOLD E. ADKINS,

Plaintiff-Appellant,

v

AMERICAN AXLE & MANUFACTURING, INC.,

Defendant-Appellee.

UNPUBLISHED
August 3, 1999

No. 205901
Wayne Circuit Court
LC No. 96-620378 CZ

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Plaintiff filed a three-count complaint against defendant, his former employer, for damages arising from defendant's termination of his employment. In his first count, plaintiff alleged that defendant violated an agreement that he would be discharged only for just cause. In his second count, plaintiff alleged that defendant violated his legitimate expectations that he would be discharged only for just cause. The trial court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) as to these first two counts. The parties subsequently stipulated to the court's order dismissing plaintiff's third count with prejudice. Plaintiff appeals as of right from the trial court's order dismissing counts one and two. We affirm.

We have consolidated plaintiff's contentions into two issues for purposes of this opinion. First, whether the trial court erred in granting summary disposition because defendant had a legitimate expectation of just cause employment. Second, whether the trial court erred in granting summary disposition because defendant's conduct created a contract for just-cause employment.

First, plaintiff contends that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because defendant's employee handbook and written agreements with plaintiff created a legitimate expectation of just cause employment. We disagree. The decision whether to grant summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In ruling on a motion for summary disposition pursuant to MCR 2.116(C)(10), the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence available to determine whether there is factual support for a claim. *Id*. The party opposing the motion

has the burden of showing that a genuine issue of material fact exists. *Skinner v Square D Co*, 445 Mich 153, 160; 516 NW2d 475 (1994). All inferences must be drawn in favor of the nonmovant. *Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

"Employment contracts for an indefinite duration are presumptively terminable at the will of either party for any reason or for no reason at all." *Rood v General Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). However, the presumption of at-will employment may be overcome by a contractual provision forbidding discharge without just cause or by establishing that the employer's policies and procedures instilled legitimate expectations of job security in the employees. *Id.* at 117-118. See *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 618-619; 292 NW2d 880 (1980).

On November 30, 1994 plaintiff signed a document entitled "Base salary change notice - compensation statement," which stated in pertinent part:

> When signed and accepted, this statement becomes a part of my basic "employment agreement" and reaffirms that my employment is from month-to-month on a calendar month basis.
>
> This statement replaces any previous "compensation statements" and shall continue in effect until the basic "employment agreement", or my employment, is terminated, or until replaced by a new "compensation statement."
>
> In consideration of my continued employment, I acknowledge that I have received all compensation due me for all services I rendered prior to the signing of this statement.
>
> There are no other arrangements, agreements, understandings, or statements, verbal or in writing, except as stated above. No modification or amendment, other than a cancellation and replacement by another written "compensation statement", will be effective, unless signed by me and my employer.

From our review of this compensation statement, we conclude that plaintiff's indefinite employment contract on a month-to-month basis was presumptively terminable at the will of either party and created an at-will employment relationship. *Rood, supra* at 116. See *Ferrett v General Motors Corp*, 438 Mich 235, 236-244; 475 NW2d 243 (1991), in which our Supreme Court reached the same conclusion after reviewing a similar General Motors (GM) agreement.

Despite plaintiff's reaffirmation that his employment was from "month-to-month," he contends that the policies set forth in defendant's employee handbook, i.e., the adopted GM employee handbook, created legitimate expectations of just-cause employment which overcame the presumption of at-will employment. We disagree. This Court has determined that similar clauses in other GM agreements and employee handbooks created an at-will employment relationship and that the employee had no legitimate expectation of a just-cause termination. See *Schultes v Naylor*, 195 Mich App 640,

643-644; 491 NW2d 240 (1992); *Singal v General Motors Corp*, 179 Mich App 497, 499, 504-505; 447 NW2d 152 (1989). However, because these decisions, which rely on the reasoning in *Taylor v General Motors Corp*, 826 F2d 452 (CA 6, 1987), pre-date the test for establishing reasonable legitimate expectations as announced by our Supreme Court in *Rood*, we find it necessary to review the policies set forth in GM's handbook in light of *Rood*.[1]

This Court must engage in a two-step analysis to determine whether an employee has legitimate expectations of just-cause termination. *Rood, supra* at 138-139. The first step is to determine what, if anything, the employer promised in its policy statement. *Id.* at 138. In doing so, we note that not all employer policy statements rise to the level of a promise, which our Supreme Court defined as "a manifestation of intention to act or refrain from acting in a *specified way*, so made as to justify a promisee in understanding that a commitment has been made." [Emphasis in original.] *Id.* at 138-139. The more indefinite the terms of the employer's policy, the less likely it is that the employer made a promise to the employee. *Id.* at 139. In addition, an employer's policy which gives the employer the choice to act or refrain from acting in a specified way is not a promise. *Id.* If the court determines that the employer made a promise to the employee, the second step of the analysis is "to determine whether the promise is reasonably capable of instilling a legitimate expectation of just-cause employment in the employer's employees." *Id.*

The GM employee handbook, entitled "Working with General Motors," provides, in pertinent part:

> 1. YOUR WORK ENVIRONMENT
>
> A review and approval process is followed to assure that personnel decisions are fair and equitable for all concerned. Several levels of management must give their approval whenever your relationship to GM changes by promotion, transfer, leave of absence, separation, or for any other reason.
>
> In addition, your personnel Department reviews all proposed changes to ensure that they are consistent with GM salaried personnel policies and procedures.
>
> 2. YOUR EMPLOYMENT STATUS AND LENGTH OF SERVICE
>
> Your employment status and length of service are important to you because they affect your eligibility for certain GM benefit programs, your vacation eligibility, and the manner in which the policies described in this handbook apply to you.
>
> Employment Status
>
> * * *
>
> As a regular employe [sic], your employment is on a calendar month-to-month basis. . . . Regular employe [sic] status enables you to share in the privileges associated with salaried employment, as described throughout this handbook.

8. EMPLOYMENT SECURITY

The management of General Motors recognizes that employment security is important to GM and to its people, and the Corporation has a good record of providing employment security for its salaried employes [sic]. Continuous employment is important because employes [sic] who are secure in their jobs, will better direct their attention to the objectives of the job and because layoffs place a very real burden on the affected employes [sic] and their families.

* * *

General Motors [sic] formal policy with respect to employment security for classified salaried employes [sic] is contained in the following policy statement:

> Salaried employes [sic] with one year of service whose performance is consistent with GM's standards will not be laid off due to outsourcing, productivity improvements and new technology. Layoffs may occur as a result of declines in volume of business, shifts in market preferences or reorganizations. However, when layoffs in such situations become unavoidable, salaried employes [sic] will have income security through the Layoff Benefit Plan and, for longer service employes [sic], the Income Protection Plan. In order to continue to have employment and income security, employes [sic] must be willing to accept offers of suitable employment in their home units or elsewhere in GM.

Retraining and placement efforts will be made when practicable to avoid layoffs in other situations; i.e., declining volume, market shifts and reorganization. However, management will continue to have available the option of layoff.

9. WHEN YOUR GM EMPLOYMENT ENDS

You and GM have much to gain from a long employment relationship. Nevertheless, that relationship will end at some point in time. Either you or General Motors may take the initiative, or there may be a mutual agreement to end the relationship.

* * *

A discharge is the separation of an employe [sic] prior to age 60 for personal conduct in the course of his or her duties such that the employe's [sic] continued employment would not be in the best interests of the Corporation.

Reasons for discharge may include dishonesty, willfull violation of instructions or Corporate Policy, insubordination, or refusal to comply with governmental requirements

related to employment. In addition, conduct reflecting badly on the Corporation, even if it occurs away from the job, may be viewed as grounds for discharge.

* * *

While the policies and procedures in the booklet do not constitute a legal contract, and do not modify the month-to-month employment relationship (which in fact may not be altered, amended or extended by any employe [sic], representative or agent of GM) described on page 4 [See Section 2, *supra*], GM does believe they represent a good basis for a productive relationship between you and GM. For this reason, we are committed to their full implementation in every GM unit and to their sound administration. Finally, to assure that our salaried personnel policies will lead to a good, long-term relationship with you, we are interested in what you think of them. Please feel free to make your views and suggestions known by utilizing the GM Open Door Policy described on page 8.

Further, plaintiff cites additional policies referred to as GM's "Performance Planning and Development Process" (PPDP), which include the procedures for developing a "Performance Improvement Plan" (PIP) for certain employees that exhibit unsatisfactory performance. The PPDP provides in pertinent part at § 508.4:

The principal objective in dealing with performance problem situations is to assist the employe [sic] in bringing the performance up to an acceptable level. . . . In those cases where the necessary level of performance after a reasonable period of time as determined by the Performance Improvement Plan, does not reach a satisfactory level, one of the following alternatives should be implemented:

- Probationary reassignment to another salaried position – this is appropriate only when the employe [sic] has had a prior record of thoroughly successful performance on other previous jobs.

- Termination of Employment: Management is the sole judge of the appropriate separation classification, and it is important that full consideration is given to the facts of the case and the impact of the separation classification applied to a specific instance. Separate classifications are discussed in Section 16 of this Manual.

Under the facts of this case, we conclude that the language in the GM employee handbook and the PPDP did not constitute a promise reasonably capable of instilling a legitimate expectation of just-cause employment in plaintiff. We find no language in the GM policies by which GM promised to treat plaintiff as anything other than an at-will employee on a month-to-month basis. Rather, the GM handbook explicitly states that plaintiff was employed on a month-to-month basis and that the policies and procedures as set forth in the handbook do not alter the parties' month-to-month employment relationship. Unlike the employment policies in *Rood, supra* at 143, which defined "involuntary termination" as "[d]ischarge for *reasons of misconduct* or *unacceptable performance*," the GM

handbook states that discharge *may* occur for a variety of reasons related to inappropriate conduct. "A nonexclusive list of common-sense rules of behavior that can lead to *disciplinary action or discharge*, clearly reserves the right of an employer to discharge an employee at will." *Id.* at 142. [Emphasis in the original.] While portions of the handbook contain policy statements by GM regarding the positive aspects of long-term employment relationships, we do not believe that these statements rise to the level of "promises" for purposes of *Rood's* legitimate expectations analysis. Likewise, we find that GM's PDPP did not create any promise by plaintiff's employer to limit its discretion in terminating plaintiff's employment. Accordingly, we conclude that defendant's policies, which it adopted from GM, cannot reasonably be interpreted as promises by defendant to limit its right to terminate plaintiff at will.

Next, plaintiff contends that the trial court erred in granting summary disposition because defendant's conduct and promises created a contract for just-cause employment. Just-cause employment based upon a contract theory requires that the parties mutually assent to be bound. *Rood, supra* at 118. The existence of assent is determined under an objective standard, focusing on how a reasonable person in the position of the promisee would interpret the promisor's statements and conduct under all the relevant circumstances. *Id.* at 118-119. Furthermore, "oral statements of job security must be clear and unequivocal to overcome the presumption of employment at will." *Id.* at 119, quoting *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 645; 473 NW2d 268 (1991).

In ¶ 8 of his affidavit filed in opposition to defendant's motion for summary disposition, plaintiff stated that Mathis made the following comments related to job security:

> In March 1994, I learned that American Axle had purchased the plant. Informational meetings were held and handouts distributed. During those meetings, Bob Mathis, who was representing American Axle, assured the assembled employees that American Axle intended to continue all General Motors policies, including the PIP process, and that employees would not be terminated arbitrarily without cause. In sum, he acknowledged that American Axle needed the experienced General Motors work force to succeed and that the chance of termination was no greater with American Axle than with General Motors.

Plaintiff contends that Mathis' oral assurances as set forth in the affidavit created a contract for just-cause employment. We disagree. It was not reasonable for plaintiff to interpret Mathis' comments as a promise by defendant to create a just-cause employment relationship. Both the GM handbook and the compensation statement refer to plaintiff's employment relationship as "month-to-month." Furthermore, we do not consider Mathis' comments to be a "clear and unequivocal" statement of job security sufficient to overcome the presumption that plaintiff was an at-will employee. As a result, we conclude that there was no objective evidence of the parties' mutual assent to be bound to a just-cause employment contract. Accordingly, we hold that the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Hilda R. Gage
/s/ Michael R. Smolenski
/s/ Brian K. Zahra

[1] In *Taylor, supra* at 456-457, the court rejected the plaintiff's contention that he had a valid *Toussaint* claim against GM "because he was given an employee handbook assuring him of promotion within and of an open door policy." The court stated that the plaintiff's contracts with GM created employment terminable at will which was not subject to oral modification and that the plaintiff had no legitimate expectation of a just-cause determination prior to his termination under the employment contracts. *Id.* at 457.